



# City of Carmel

## **Carmel Advisory Board of Zoning Appeals Regular Meeting Monday, September 27, 2004**

The regularly scheduled meeting of the Carmel Board of Zoning Appeals met at 5:00 PM on Monday, September 27, 2004 in the Council Chambers of City Hall, Carmel, Indiana. The meeting opened with the Pledge of Allegiance.

Members in attendance were Leo Dierckman, James Hawkins, Earlene Plavchak, Madeleine Torres and Charles Weinkauff, thereby establishing a quorum. Jon Dobosiewicz and Mike Hollibaugh represented the Department of Community Services. John Molitor, Legal Counsel, was also present.

Mr. Dierckman moved to approve the minutes as submitted from the Special August 11, 2004 meeting. The motion was seconded by Mr. Hawkins and **APPROVED 4-0.**

Mr. Dierckman moved to approve the minutes as submitted from the August 23, 2004 meeting. The motion was seconded by Mrs. Torres and **APPROVED 4-0.**

Mr. Dobosiewicz gave the Department Report. He stated that last month on Item 1h, Fifth Third Bank, one member had recused himself. A replacement member has been found to hear that one item and will be here at 6:00 PM. The Department recommends reordering the agenda and placing Item 1h after 24h, which occurs before Old Business. The Department recommends taking action on Item 11h, Martin Marietta Appeal to Director's Determination, now and table the item to a meeting date of October 13, 2004 at 7:30 PM.

Mr. Molitor gave the Legal Report. With regard to the Appeal to Director's Determination of Martin Marietta, he has drafted a special rule to govern the hearing of that matter. He would like to discuss it with the attorneys who are involved in that matter. When that is accomplished, he will send a draft of that special rule for the Board's consideration of the ground rules for that special meeting.

Mr. Dierckman moved to reorder the agenda so that Item 1h is heard after Item 24h. The motion was seconded by Mrs. Torres and **APPROVED 4-0.**

Mr. Hawkins moved to table Item 11h to Wednesday, October 13, 2004 at 7:30 PM in the Council Chambers. The motion was seconded by Mrs. Torres and **APPROVED 4-0.**

### **H. Public Hearing.**

#### **1h. Fidelity Plaza, Tower 3 - Fifth Third Bank Sign**

The applicant seeks the following development standards variance:

**Docket No. 04070017 V** Chapter 25.7.02-11(b) number of signs

The site is located at 11590 N Meridian Street.

The site is zoned S-2/Residence & B-6/Business within the US 31 Overlay.  
Filed by Tom Engle of Barnes & Thornburg for REI Investments.

**This item was moved to the end of the Public Hearing section, after Item 24h.**

**2-10h. West Carmel Marketplace**

The applicant proposes a retail shopping center and seeks the following Development Standards Variances:

<b>Docket No. 04050029 V</b>	Chapter 23C.10.02.2	rear foundation plantings- Primary Bldg
<b>Docket No. 04050030 V</b>	Chapter 23C.13	access to tracts
<b>Docket No. 04050033 V</b>	Chapter 25.07.02-11.b	sign number & type
<b>Docket No. 04050034 V</b>	Chapter 25.07.02-11.c	wall sign area-Primary Bldg
<b>Docket No. 04050035 V</b>	Chapter 25.07.02-11.c	ground sign area
<b>Docket No. 04050036 V</b>	Chapter 25.07.02-11.d.i	ground sign height- Primary Bldg
<b>Docket No. 04070008 V</b>	Chapter 25.07.02-11(g)	extra changeable copy area
<b>Docket No. 04070009 V</b>	Chapter 23C.09.D	facade projections/recessions
<b>Docket No. 04070010 V</b>	Chapter 23C.09.D	facade material change: horizontal-vertical

The site is located northeast of 99th Street and Michigan Rd/US 421. The site is zoned B-3/Business and B-2/Business within the US Highway 421 Overlay.

Filed by Mary Solada of Bingham McHale for Duke Realty.

Present for the Petitioner: Mary Solada, 2700 Market Tower, Indianapolis. Also in attendance was the project team: Cindy Schembre, Senior Vice President from Duke, Greg Ewing from Bingham McHale, Bill Fehribach and Matt Brown, A&F Engineering and Tom McLaughlin, Duke. Last week the project received approval of the ADLS site plan from the Plan Commission. There were three Special Studies committee meetings as part of the process. There have been a number of meetings with three affected neighborhood associations. The approval by the Plan Commission was subject to commitments that have been executed and submitted to the case file. They are pertinent to two of the variances this evening. The commitments are limitations on the signage in terms of size, color, location; landscaping and amount of detail; and the proposed access to Michigan Road from 99<sup>th</sup> Street. That access/curb-cut will not be opened until Block G is developed. A site plan was shown. This project consists of the building at the north end of the site, the large inline building, and two out-lot buildings along Michigan Road. To the east of there and south of the inline building, there is a large tract that is Block G. It is also under the control of Duke Construction and at some point that will come back to the Plan Commission for ADLS approval for its site plan. The Ordinance limits curb-cuts onto Michigan Road and a variance is needed to have a curb-cut. The commitments that have already been tendered to the record under the Plan Commission state that the curb-cut will not be opened until Block G obtains its own site plan approval. The need for this curb-cut will be even more so once that additional ground is developed. Additionally, those commitments indicate that the sole access to this development is the 99<sup>th</sup> Street, plus there is an additional right-in, right-out cut. All necessary right-of-way relative to 99<sup>th</sup> Street will be dedicated to the City, as well as the land necessary for the Commerce Drive extension. Any sort of median work that would be desired by State Highway on Michigan Road would be undertaken. The wall signage for the inline building, which sets about 700 feet from Michigan Road, is limited to 225 square feet, which is in excess of the Ordinance. The colors of the letters will be limited to bronze, white, blue or green to have some consistency. The County and City Thoroughfare Plan call

for Mayflower Drive access to be dedicated for public use. The curb-cut will give more access to the site and eliminate some traffic off Michigan Road. The funding for these road improvements would be a TIF that Duke would be a guarantor of.

Members of the public were invited to speak in favor or opposition to the petition: no one appeared.

Mr. Dobosiewicz gave the Department Report. There was a considerable amount of public input into these issues at the Plan Commission level from representatives of the three neighborhood associations, as well as several interested individuals. In an attempt to make things simpler for purposes of consideration, the Department has grouped the variances into four categories for consideration. The Department is recommending favorable consideration of all the variances. The City's traffic consultant, John Myers, was present for any questions.

Mr. Hawkins asked about the maintenance of Mayflower Drive at 99<sup>th</sup> Street.

Ms. Solada stated that it is an easement for public use that was dedicated in 2000. It will be dedicated to the City. In the meantime, it will be maintained by the owners.

Mr. Molitor stated that the County did not want to accept it in 2000 and take the maintenance responsibility. Therefore the easement was dedicated as a right-of-way. The City will probably be willing to take the dedication, but is under no obligation.

Mr. Dierckman stated that the Plan Commission spent lots of time on this project and he is comfortable with it.

The Public Hearing was closed for **Docket No. 04050029V**. Mr. Dierckman moved to approve **Docket No. 04050029V, West Carmel Marketplace**, regarding foundation plantings. The motion was seconded by Mrs. Torres and **APPROVED 4-0**.

The Public Hearing was closed for **Docket No. 04050030V**. Mr. Dierckman moved to approve **Docket No. 04050029V, West Carmel Marketplace**, regarding access; subject to the filing of recorded commitments concerning access geometries, timing, and the extension of Commerce Drive and improvements to 96<sup>th</sup> Street. The motion was seconded by Mrs. Torres and **APPROVED 4-0**.

Mr. Dierckman moved to approve **Docket No. No. 04050033V through 04050036 V and 0407008 V, West Carmel Marketplace**, regarding signage. The motion was seconded by Mrs. Torres. The Public Hearing was closed for **Docket No. 04050033V through 04050036 V and 0407008 V**. All variances were **APPROVED 4-0**.

The Public Hearing was closed for **Docket No. 04070009 V and 04070010 V**. Mr. Dierckman moved to approve **Docket No 04070009 V and 04070010 V, West Carmel Marketplace**, regarding façade design. The motion was seconded by Mrs. Torres and all variances were **APPROVED 4-0**.

**11h. TABLED to OCT 13 ~~Martin Marietta, Appeal to Director's Determination of~~**  
**~~The applicant would like to appeal a Director determination that Martin Marietta's~~**  
**~~operation is a legal, noneconforming use:~~**

~~**Docket No. 04070020 A** Chapter 28.06 Existence of a Nonconforming Use  
The site is located north of 106<sup>th</sup> Street and west of Hazel Dell Parkway. The site is  
zoned S-1/Residence Low Intensity. Filed by Tom Yedlick.~~

**12-13h. Carmel/Clay Schools - West Side Transportation Facility**

The applicant seeks the following special use amendment and Development standards variance approvals:

**Docket No. 04080024 SUA** Chapter 5.02 special uses

**Docket No. 04080041 V** Chapter 27.03.02 curbed parking

The site is located southeast of Shelborne Rd and 126th St. The site is zoned S-1/Residence. Filed by Mr. Reynolds of Paul I Cripe, Inc for Carmel/Clay Schools.

Present for the Petitioner: D. J. O'Toole, Paul I. Cripe, 7172 Graham Road, Indianapolis. The Special Use Amendment is to allow the construction of a bus light-maintenance and storage facility and parking for the drivers. A site plan was shown. They are also requesting to construct an athletic storage and concession facility near the soccer fields at Creekside Middle School.

Mike Ship, Fanning & Howey, 9024 N. River Road, Indianapolis. The athletic facility is like the others constructed on site at the football, baseball and softball fields. The building will be approximately 950 square feet with concessions, restrooms and a small storage area. The same brick will be used that was used on the all the other buildings.

Mr. Weinkauff asked if the building will serve only the school or will be used for all games at the soccer fields and its exact location.

Mr. Ship stated it would serve all activities at the field.

Ron Farrand, Carmel Clay Schools, stated that the existing Carmel Dad's Club building is located on the other side of the creek from this facility.

Mr. O'Toole stated that the no curbing in the bus area will facilitate snow removal and helps with drainage, as well as the cost issue.

Members of the public were invited to speak in favor or opposition to the petition: no one appeared.

Mr. Dobosiewicz gave the Department Report. The Department recommends favorable consideration of both the Special Use Amendments and the Developmental Standards Variance.

The Public Hearing was closed for **Docket No. 04080024 SUA**. Mr. Dierckman moved to approve **Docket No. 04080024 SUA, Carmel/Clay Schools – West Side Transportation Facility**. The motion was seconded by Mr. Hawkins and **APPROVED 4-0**.

The Public Hearing was closed for **Docket No. 04080041 V**. Mrs. Torres moved to approve **Docket No. 04080041 V, Carmel/Clay Schools – West Side Transportation Facility**. The motion was seconded by Mr. Hawkins and **APPROVED 4-0**.

Mrs. Plavchak joined the meeting at this point.

**14-23h. TABLED 116th/Keystone Retail Shops**

~~The applicant seeks the following development standards variances:~~

~~**Docket No. 04080027 V** Chapter 14.04.02 60 ft front yard~~

~~**Docket No. 04080028 V** Chapter 14.04.03 30 ft side yard~~

~~**Docket No. 04080029 V** Chapter 14.04.05 30 ft rear yard~~

~~**Docket No. 04080030 V** Chapter 14.04.09 80% lot coverage~~

~~**Docket No. 04080031 V** Chapter 14.06 30 ft greenbelt adjacent to residence~~

~~**Docket No. 04080032 V** Chapter 23A.02 120 ft front yard from US 431 R/W~~

~~**Docket No. 04080033 V** Chapter 23A.03 30 ft greenbelt along US 431~~

~~**Docket No. 04080034 V** Chapter 23A.04 parking prohibited in greenbelt~~

~~**Docket No. 04080035 V** Chapter 25.07.02 9(b) number of signs~~

~~**Docket No. 04080036 V** Chapter 26.04.05 buffer yards~~

~~The site is located at the northeast corner of 116th St. and Keystone Ave.~~

~~The site is zoned B-3/Business within the US 431 Overlay.~~

~~Filed by Steve Hardin of Bingham McHale for Eclipse Real Estate, Inc.~~

**24h. Weiss & Company, Inc**

The applicant seeks the following development standards variance:

**Docket No. 04080037 V** Chapter 26.04.05 buffer yard

The site is located at 320 S Range Line Rd. The site is zoned B-1/Business.

Filed by Dave Barnes of Weihe Engineering for Weiss & Company, Inc.

Present for the Petitioner: M. M. Weiss, 320 S. Range Line Road. Dave Barnes, Weihe Engineering was also in attendance. They wish to add the rest of the second story to the present building. They have been in this location since 1980. It was originally platted in 1845 and the house was built in 1850. The lot is only 69 feet wide. A site plan was shown. In order to maintain the needed driveway width, since the building exists, they would get down to less than 20 feet and the curb-cut already exists. Pictures of the facility were shown. They need a variance for the south buffer for the front eighty-five feet. Scott Brewer, the City's Urban Forester, gave them suggestions for their buffer. They will be adding about ten feet to the back of the facility for a stairway to access the second floor. They will be putting brick on all the building. The neighbors to the west and south endorse the improvements. This will be an overall improvement to the appearance of the site.

Members of the public were invited to speak in favor or opposition to the petition: no one appeared.

Mr. Dobosiewicz gave the Department Report. The applicant has worked with the Urban Forester, Scott Brewer, to come to an agreement on the proposed level of landscaping. The Department recommends favorable consideration.

Mr. Dierckman moved to approve **Docket No. 04080037 V, Weiss & Company, Inc.** The motion was seconded by Mrs. Torres. The Public Hearing was closed for **Docket No. 04080037 V.** The motion was **APPROVED 5-0.**

**1h. Fidelity Plaza, Tower 3 - Fifth Third Bank Sign**

The applicant seeks the following development standards variance:

**Docket No. 04070017 V** Chapter 25.7.02-11(b) number of signs

The site is located at 11590 N Meridian Street.

The site is zoned S-2/Residence & B-6/Business within the US 31 Overlay.

Filed by Tom Engle of Barnes & Thornburg for REI Investments.

Mr. Hawkins recused himself. The alternate Board member was Jay Dorman.

Present for the Petitioner: Tom Engle, 11 S. Meridian Street, Indianapolis. Also present were Joe Deer, Fifth Third Bank, Julie Christiansen, REI Investments, David Curl, Fifth Third's architect from Cincinnati, and Scott Borden of Benchmark Land Services. This variance is for a wall sign atop the Fidelity Plaza building. This is in addition to a sign for another tenant, Midwest Sleep Institute. This item was presented at last month's meeting and received a no-decision vote. In accordance with the rules, he made a brief recapitulation of the presentation and amended it with some additional information. This will be a retail banking facility with a drive-thru and an ATM to be added on the north of the building. This project received unanimous approval from the Special Studies Committee and ADLS approval from the Plan Commission. This is a multi-tenant building complex. The building directly to the east has another retail bank with drive-thru, ATM and separate entrance with two signs on the building. This variance would not be precedent-setting.

Joseph Deer, 38 Fountain Square Plaza, Cincinnati, OH. Brand identity is essential to Fifth Third for customers traveling from outside the area. Other businesses often align themselves with banking facilities and could draw tenants to the building.

Members of the public were invited to speak in favor or opposition to the petition: no one appeared.

Mr. Dobosiewicz gave the Department Report. The Department is recommending favorable consideration.

Mr. Dorman had various questions. He asked about canopy signs, size of the signs, and illumination.

Mr. Engle stated the sign would be approximately 100 square feet and there would not be canopy signage. The sign will be white like the existing sign.

Mr. Deer stated that the Fifth Third sign is designed to go into a residential neighborhood and will be soft, back-lit illumination with a target range of less than one-quarter mile.

Mr. Engle stated that the proposed wall signage illumination will be no greater than the existing sign.

Mr. Dierckman asked about the square footage of the entire building and the square footage that Fifth Third would be leasing.

Mr. Engle stated the entire building is six floors with 155,000 square feet. Fifth Third will be leasing approximately 7500 square feet, with 2500 square feet for the drive-thru.

Mr. Dierckman and Mr. Weinkauff were concerned about retail use of the area instead of commercial use. They felt additional larger tenants would also want signage.

Julie Christiansen, REI Investments, 11711 W. Pennsylvania. She stated that REI does not consider Fifth Third a minor tenant and that Fifth Third would help draw other tenants to this building which is fifty-five percent unoccupied.

Discussion followed regarding the number of potential signs for the building.

Mrs. Torres moved to approve **Docket No. 04070017 V, Fidelity Plaza, Tower 3 – Fifth Third Bank Sign**, with the verbal commitment that the new sign illumination will be no greater than the existing signage. The motion was seconded by Mr. Dorman. The Public Hearing was closed for **Docket No. 04070017 V**. The motion was **APPROVED 3-2**, with Mr. Dierckman and Mrs. Plavchak casting the opposing votes.

A fifteen minute recess was taken.

**I. Old Business.** (To begin no earlier than **6:30 p.m.** – Public Hearing remains open)

**1h. Martin Marietta Materials - Mueller Property South**

The petitioner seeks special use approval for a sand and gravel extraction operation.

**Docket No. 04040024 SU** Chapter 5.02.02 special use in the S-1 zone

The site is located at the southwest corner of the intersection of East 106<sup>th</sup> Street and Hazel Dell Parkway. The site is zoned S-1/Residence - Low Density.

Filed by John Tiberi of Martin Marietta Materials, Inc.

The Public Hearing was continued on this item. Individual remonstrators would be allowed to speak and any new information that came before any party could be presented. Martin Marietta had filed two documents: a sound level assessment and an executive summary.

Present for the Petitioner: Zeff Weiss, Ice Miller. He stated the two submittals were requested by the Department and did not include any new information.

Present for the Remonstrators: Phil Thrasher. He distributed to the Board a written rebuttal to the new information they received at the last meeting on August 11, 2004.

Mr. Weinkauff indicated there was a woman sitting at the end of the dais doing a recording of the meeting. She has not legal standing and is not a part of the Board.

Mr. Weiss objected to the 40-50 page presentation of the Remonstrator's position/rehash of all the issues in this matter, rather than the two new documents. They objected to any further evidence presented by Mr. Thrasher.

Mr. Molitor stated that if the Remonstrators are given the opportunity for rebuttal, the Board may want to suspend the rules and grant the same amount of time to the Petitioner for rebuttal.

Mrs. Torres moved to suspend the rules to allow rebuttal from both sides of the issue. The motion was seconded by Mrs. Plavchak and **APPROVED 4-1**, with Mr. Dierckman casting the opposing vote.

Mr. Weinkauff reminded Mr. Thrasher to limit his comments, at this time, to the two documents that were submitted to the Board, the Department, and the Remonstrators.

Mr. Thrasher stated there were a few changes in the Executive Summary from what was presented at the last meeting. There were also some documents distributed at the August 11 meeting that the Remonstrators did not have a chance to review until tonight. There are two versions of the Sound Level Assessment prepared by Skelly and Loy, one submitted August 11 and the second version much later. The Remonstrators feel the assessment is incomplete. The map includes a berm along the south side of Kingswood which does not exist and is not in any proposal. The decibels in the report are in ten minute averages. There are no spikes and valleys, so a backup beeper would disappear in the averaging. There is a chart indicating levels of decibels with and without the Carmel Sand plant operating. The sound readings when the plant is in operation are often less than when the plant is operating. He did not see how that was possible when later in the report the plant is generating 70 decibels. When the measurements were taken in the Fall, the ambient noise level was 54-57 decibels. He wondered what the level would be when the insects are gone and the trees are bare. None of the measurements were taken at a second floor level, which is higher than a berm. A number of neighbors have second floor bedrooms. The report indicates an increase of 3 decibels is a doubling of sound. People perceive a 5 decibel difference and they think at 10 decibels it really has doubled. But it really has doubled at 3 decibels. We do not know at what capacity the Carmel Sand plant was operating when the measurements were taken. Changes that were found in the Executive Summary were the direction of the trucking. There was no commitment to the building of the berm and the relocation of Blue Woods Creek. The trucks will now be using a dirt road to 106<sup>th</sup> Street, going east to Hazel Dell and then turning north. The noise study states there will be 32 outbound trucks per hour; therefore there will be that many inbound trucks. According to a letter in the report from Yarder Engineering, a traffic engineer, that much truck traffic at 106<sup>th</sup> Street and Hazel Dell Parkway is liable to cause some traffic and safety issues.

Individual Remonstrators:

Marcus Freihofer, 11136 Bradbury Place, Kingswood subdivision. He would like the Board members to consider the impact of their decision on the future of the residents and property owners in southeast Carmel. If this is approved, Martin Marietta will logically request open-pit and underground mining in the future for all the Mueller property north of 106<sup>th</sup> Street.

Kelly Nocco, 4923 Woodcreek Drive. There have been a lot of articles recently in the Indianapolis Star quoting Mayor Brainard on quality of life and attracting business to Carmel as a premier edge city. Mining is in contrast to what Carmel is trying to accomplish. Mining is an annoyance and eyesore. He does not want to see any more barbed wire fences, berms, gravel trucks and "No Trespassing" signs. When the residents purchased their homes they knew mining was there, but the remainder of the area was not zoned for mining, or many wouldn't have bought their houses.

Joe Hession, 4943 St. Charles Place, 16 year Kingswood resident. Agreed with Mr. Nocco. Noise in the second floor bedroom is more than a nuisance. Dust and dirt are aggravating on Gray Road, 96<sup>th</sup> Street and 106<sup>th</sup> Street. He did not feel the 3.6 minor earthquake the area experienced earlier in the

month. However, today the 1:00 PM blast shook his entire house. The mining does not need to go any further.

Hal Poulin, 11751 Dubarry Court, behind Founders Park. He had been an aggregate industry for 25 years. The reclamation in the Founders Park area does not meet the standards of what is normally applied. Martin Marietta should get their operation in order with dust control with wheel washers.

Rand Gengenbach, 5011 Westwood Circle, Kingswood. Thirty years ago, when he lived at 3625 Stratford Place, which is about the same distance from Martin Marietta, he could hear distant thunder/blasting. Now, the 1:00 PM and the 3:00 PM blastings shake and rock items in his home.

Tom Yedlick, 5053 St. Charles Place, Kingswood, distributed packets to the Board. He reviewed Special Uses from the Ordinance. The Comprehensive Plan does not authorize mineral extraction or mining in any zoning district. The Comprehensive Plan may guide the City Council in zoning, but the BZA is not authorized to change the zoning. Mining has been going on for over 30 years under an exemption under State law. The City has assumed it is not empowered to regulate it, so there are no provisions in the Zoning Ordinance authorizing mining as a Use in any district. Martin Marietta, and its predecessor American Aggregates, had the power to come before this Board for a Special Use. When the City annexed the property, it became subject to Carmel's zoning jurisdiction. Before that, under the State Law, it prevented the City from prohibiting mining. They are a Non-conforming Use. There are no guidelines in the Ordinance for mining. The Carmel City Council is working on its third version of mining regulations. He stated that the Zoning Board may not approve the expansion of a Non-Conforming Use in connection with a Special Use, according to the Ordinance. He discussed mineral extraction as Special Uses in the S-1 and M-1 zoning districts. He stated this mining area should be zoned M-1. He then discussed Non-Conforming Uses. He stated that since both Carmel Sand and the 96<sup>th</sup> Street operations do not conform to any existing Ordinance, they are not subject to the Special Use regulations. They have been operating in a vacuum and those operations are deemed to be Non-Conforming Uses. Under the Carmel Zoning Ordinance, 28.01.06, existing Non-Conforming Uses, eligible for Special Use approval shall not be considered legal Non-Conforming Uses, nor require Special Use approval for continuance, but shall require Special Use approval for any alteration, enlargement or extension. In their application, they are requesting an expansion and change of the existing Non-Conforming Use. He discussed Uses as defined in the law. He stated that Carmel Sand and the 96<sup>th</sup> Street operations can be used only for their original intended use and nothing else. He felt they should apply for a rezone to M-1, which is not under this Board's jurisdiction. Processing is not permitted in the S-1 District. He felt they were in violation of their Non-Conforming Use status. There are too many unanswered questions regarding the proper use of this property. This use bears some risks to the aquifer. There are other less risky uses in other Martin Marietta applications.

Gina Shupe, 4969 Kingswood Drive. She is home during the day. The blast today shook her house and woke her sleeping infant. Moving the sand and gravel mining would ultimately lead to more blasting further north, affecting more Carmel neighborhoods.

Jan Lingengelter, 5108 Kingswood Drive. With the existing sand operation, they cannot open their windows at night, because of the noise from the trucks. They have an electronic air filter to try to help with the dust. She would prefer not to have the operation expanded.

Phil Kincaid, 5000 Huntington Drive, Kingswood. The homes surrounding the Martin Marietta

property have a greater tax value and should carry some weight. He pays the same property tax rates as other people in Carmel and should have the same rights to the quality of life as others in Carmel, which he doesn't feel they have. The blasting is a huge issue and this application would allow them to move their activities closer to the homeowners.

Tom Lange 5048 St. Charles Place, Kingswood. The truck traffic as proposed on the narrow 106<sup>th</sup> Street would cause safety issues. That road is not made for heavy truck traffic. A traffic light would be needed at 106<sup>th</sup> Street and Hazel Dell to get the truck traffic in and out and that would defeat the purpose of Hazel Dell Parkway. He did not feel the area had adequate reclamation and aesthetics. At some point when Martin Marietta is done, the main pit at 96<sup>th</sup> is supposed to turn into a lake. He wonders where all the water will come from to fill the pit and if the tunnels will be flooded. His overriding concern was the noise, dirt and vibration from the mining.

Russ Sveen, 11109 Woodbury Drive, Kingswood. He brought a note from his neighbor, Mike Donnelly, 11079 Huntington Drive, who was out of town and could not attend the meeting. The Donnelly's live on the corner of southeast corner of Kingswood, which is one of the closest properties to the proposed mining and sand plant. When Mr. Sveen moved there about seven years ago, the operation was an acceptable nuisance. Two years ago the negotiations with Martin Marietta included moving the sand plant farther away. Since they have started trucking material into the site, the amount of processing, beeping and banging has multiplied and it now a very onerous nuisance. The sound does travel to the second story bedrooms making it difficult to sleep. It has become an unacceptable level of nuisance.

Bill McEvoy, 5120 Williams Circle, President, Kingswood HOA. Kingswood is no longer divided and is against any further expansions. He felt the City should adopt a Mining Ordinance and a Wellhead Protection Ordinance, to effectively manage it.

Larry Counen, 5048 Huntington Drive, Kingswood, since October 1996. He previously lived in California and experienced many earthquakes. The blast shook his home more than any earthquake he had experienced. Indiana homes are not built for blasts. He wonders what damages to his home, such as cracks, have been caused by Martin Marietta. The noise starts as early as 5:30 and 6:00 AM and also in the evenings when you would like some quiet time with your family. He has been a Kingswood HOA board member. Since 96<sup>th</sup> Street and Hazel Dell Parkway have opened, the mine and noise have become more of a nuisance. He would like all the requests denied and let them have quality of life in the City of Carmel.

Christopher Booher, 11134 Westminster Way, Kingswood. This is an emotional issue. This is a public welfare issue. This is a series of dominoes. Tonight's application is for sand and gravel, but there are other applications. He was present in March 2002 in Hamilton County's Superior Court when Martin Marietta's attorneys at the time rebutted the Kingswood position that the Mueller Farm South, "while zoned residential is impractical since no one wants to live next to a mine." And that is a quote. These applications will move the mine closer to Kingswood. The sand and gravel operation on Mueller South will inextricably change the character of that land, barring it from any further practical use. This could lead to the entire "miningization" of the entire Mueller Farm. Distance is the only true buffer. There is no measure of the stress put on their homes or on humans.

Mr. Weinkauff stated that rebuttal would be limited to 15 minutes from each party.

Wayne Phears, attorney for Martin Marietta. He asked if the Remonstrators would get a chance for rebuttal after the Petitioner's rebuttal and where would Staff comments fit in?

Discussion followed regarding the order of the rebuttal, department report and comments from the mining consultant. The Department Report would come after the public debate and rebuttal.

Mr. Phears stated there has not been a change in zoning. It has been S-1 allowing mining as a Special Use. The mine has existed for 40 to 50 years. The Ordinance states that Special Uses shall be considered favorably. The Department Staff chose to bring this application forward first. They would have desired to resolve the Mueller North issue first, either with a new application or resolving the application in litigation. Most of the remonstrators tonight talked about the mining operation north of 106<sup>th</sup> Street. Those issues could be solved with the Mueller North application and moving the plant to the east side of Hazel Dell Parkway. This application tonight is for mineral extraction only with no blasting. Mr. Yedlick's discussion was directed toward processing, not mineral extraction which is what this application is about. The sound level assessment shows there will be no sound impact from this application on the neighborhood. Mr. Thrasher is a lawyer, not an expert. They have various sound monitors throughout the area. The biggest impact on noise in that area is Hazel Dell Parkway. The plant does not operate in the winter. He read from the sound assessment, page 3, that typically a change of 2 to 3 decibels is barely perceptible. A change of 5 decibels is readily noticeable. A 10 dba increase is usually perceived as a doubling. Nothing this Board does is going to change the operation of the plant. Martin Marietta has done a very good job with landscaping along Hazel Dell Parkway. They do not own Founder's Park. They do not own the corner of 116<sup>th</sup> Street. In 2002 the Kingswood neighborhood supposedly agreed to Mueller North and to move the plant. They would be glad for the neighborhood to come forward and support Mueller North.

Mr. Weiss stated the decision should be based on the evidence presented. Mr. Thrasher addressed blasting, the need for mining regulation ordinance, his understanding of the S-1 and M-1 districts and Mr. Yedlick and the remonstrators want the Board to act as a legislative body and listen to their emotional appeal. This Board is a quasi judicial body. Therefore the Board must review the Ordinance and apply the Ordinance to the facts. The City Council is the legislative body. He showed a list of the schedule of uses from the Ordinance. Mineral sand gravel extractions are permitted in the S-1, S-2 and all the R districts as a Special Use. You have to take the minerals from where you find them. There is no blasting in this application, only sand and gravel extraction. The water and aquifer will be monitored, as suggested by Mr. Mondell. The City's consultants from Spectra, Mr. Sovas & Mr. Kappel, stated that this is a legitimate mine plan, reclamation plan, and Martin Marietta has addressed all other issues raised, and confirmed the Skelly and Loy sound assessment. Mr. Duffy from Carmel Utilities concluded they could co-exist and this does not appear to be a threat to the aquifer or water plant. Five applications were filed in December 2002 and they would like the Board to see all of them. This application was docketed first by the Department. Contrary to what Mr. Yedlick stated, under the Ordinance, anything that was lawful at the time it was in operation and subsequently converted remains lawful. It is not a continuation or expansion of a legal Non-Conforming Use. The section of M-1 quoted by Mr. Thrasher was from the Development Standard. The processing and all related activities are permitted in the S-1 district.

#### Rebuttal:

Mr. Thrasher rebutted each item. He stated that this mine was on property not owned by Martin Marietta. He would like to know when the Mueller lease was signed and he would like to see a copy of

it. He discussed the offer that had been made, and rejected, to mine Mueller North and South and move the sand plant. He felt the sound report was nice, but felt there had been plenty of remonstrators who witness the noise level. He would like a commitment that the sand plant does not operate in the winter. He also quoted from the sound report that the doubling of the noise source will result in a 3 decibel increase in total level. Regarding the difference between M-1 and S-1 with respect to Special Use and mineral extraction, he stated that this BZA has the power to interpret the Ordinance. He stated that M-1 has different performance standards that are not found in the S-1. He felt the commercial mining should be in M-1. He felt the consultants did not support the mine, but felt they had addressed all issues. He discussed the monitoring wells and wondered who would pay for installation and monitoring. Blasting is an issue because the applications are on file. He stated that in order to be a legal Non-Conforming Use, it had to be a legal use at one time under the Ordinance. He felt they conformed to no Ordinance in the County. Changing a legally Non-Conforming Use makes it illegal. Taking the water and trucks off of Mueller South and across some other ground, represent changes on that ground that are not included in this petition. There are five criteria that must be satisfied for a Variance Or A Special Use. In a Special Use, if they win all five points, then there is a bias in adopting. He felt his comments on the additional items from the August 11 meeting were covered in his report that had been distributed to the Board.

Jason Kappel, Spectra Environmental Group, 19 British American Blvd, Latham, NY, was called on to give comments. Documents were distributed to the Board regarding general comments and commitments on the Executive Summary. The expectation for the Executive Summary document was that it would have a commitment to the final mine plan, its date, and the final reclamation plan and its date. That should be added. There should be a commitment to the moving, lining and reclamation of Blue Woods Creek. He felt there should be commitments as to the exact haul roads and access points onto Gray Road and 106<sup>th</sup> Street, and they should be shown on the mine plan map. Sequencing of berms and relocation of Blue Woods Creek in relation to mining should be given in more detail. There should be a specific objective to what the reclamation would be and a final reclamation map. All of these comments were discussed with Martin Marietta earlier today. He also had comments on the commitments, such as hours of operation being scaled back; definition of sequencing of acoustic and visual buffers and the mining; reclamation; Blue Woods Creek commitment; water-handling and ground water management commitments; site ingress and egress; ascending alarms on equipment in place of backup alarms; truck tarps; and statement of the Mueller conservatory regarding the legal agreement with Martin Marietta. He reviewed the June 2004 sound assessment. The berms shown on Mueller North were a mapping error and not taken into the noise calculations. He felt the noise study was a useful document for the Board to use in their decision.

Mr. Dobosiewicz stated that after receiving the comments from the public, Mr. Molitor had helped the Department in assembling conditions as submitted by Martin Marietta and comments taken from previous meetings, as well as conditions and commitments requested by remonstrators. The Department requests two things in the continuation of the deliberation: 1) Martin Marietta to present any revised commitments based upon discussions and information that the Department had previously submitted to them in writing; and 2) at that point, the Board should consider and discuss each commitment or condition with the Department and consultant. He stated that Mr. Molitor had approximately 40 conditions and/or commitments.

A brief recess was taken to discuss with Legal Counsel and Department Staff the next steps in this process.

Mr. Weinkauff stated there were many questions that still needed to be asked in this issue. The Board might prefer to hear all the petitions rather than have them segmented and heard one at a time. The Special meeting on October 13, 2004 is to hear an Appeal to the Director's Decision on Martin Marietta, filed by Mr. Yedlick, relative to the continued operation of the sand and gravel plant and the processing of sand and gravel that is extracted off-site. Mr. Weinkauff suggested that the current agenda item be continued to the October 13 meeting as the second agenda item. He directed the Staff to continue to work on commitments that may be necessary depending upon the eventual outcome of a vote of this Board. The Board would also like to have a list of the conditions/commitments to date. He also asked the Petitioner and Remonstrators to prepare Findings of Fact to be distributed to Board members.

Mr. Molitor suggested that the Petitioner and Remonstrators be advised that the Board may be interested to hear what they have to say on any motion made by the Board on approval or further delays.

Mr. Weiss stated that the Rules of Procedure describe how these petitions are to be filed, presented, argued and voted on. All five applications were brought a long time ago. This is the first one to be docketed by the Department. They would like this one to be decided on while the evidence is still fresh. He felt the evidence had been concluded. The commitments were submitted some time ago and he just received Department comments late this past Friday. It was fortuitous that they were able to discuss them today. He suggested that the Board either vote on the merits of the petition subject to working out an acceptable set of commitments based on discussions with the Department and come back for final approval or let them work together in the next several days and bring them forward for a vote. The additional four petitions deal with blasting, surface mining, sub-surface mining, and will need another review. By that time the Board will not recall what was presented in August, 2004 for the sand and gravel petition for Mueller South.

Mr. Weinkauff stated that he had a lot of questions as to how this sand and gravel application relates to the remaining four applications. The Board has the ability to vote to change their procedure and waive certain rules.

Discussion followed on the date for continuing this petition.

Mr. Dierckman moved to continue **Docket No. 04040024 SU, Martin Marietta Materials - Mueller Property South** to the second agenda item on the October 13, 2004 Special Meeting Agenda. The motion was seconded by Mrs. Torres.

Mr. Hawkins asked to what extent they would hear the other petitions.

Mr. Dierckman stated he was nervous relative to Procedure. He felt the Board discussed things and he was nervous because Mr. Weinkauff had gone off and had concepts of the way the Board was going to do business.

Mrs. Torres also had procedural concerns about docketing. She thought each item was heard as it was docketed.

Mr. Molitor remarked that the Remonstrators stated that this application should not be considered individually, but should be considered in connection with the others that are still pending. To this point, the applications have been docketed separately. It is within the Board's authority to hear all or some of the applications before deciding on any of them.

Mr. Weiss stated this application had been docketed separately by the Staff and he objected to this one being tabled indefinitely while the others, which have not been through the TAC process, are presented.

Mr. Phears stated that he is not available during the week of October 11 and the next regular meeting would be better for his participation. It will also give them time to deal with the commitments.

Mr. Dierckman's concern was procedural regarding bringing other matters into this case and having them debated in this situation. He was worried about the integrity and soundness of the process. He is sure one of parties will sue the Board and the process has to have the utmost integrity. The Board only has one application we are dealing with at this time.

Mr. Thrasher stated that he could deal with either date, but it would be better to have this on the later date.

Mr. Dierckman withdrew his motion and Mrs. Torres withdrew her second.

Mr. Dierckman moved to continue **Docket No. 04040024 SU, Martin Marietta Materials - Mueller Property South** to the October 25, 2004 regular BZA meeting. The motion was seconded by Mrs. Torres. Mr. Dobosiewicz wanted to know if the Board wanted the Department to work with the Petitioner in decimating all the proposed conditions or commitments and bring back to the Board a final draft. Mr. Weinkauff stated they would like them before the October 25 meeting. The motion was **APPROVED 5-0**.

## **J. New Business.**

### **1j. Proposed amendments** to Article IX (BZA Rules of Procedure), Section 30.08: Alternate Procedure (Hearing Officer), and Chapter 21: Special Uses.

Mr. Dierckman moved to move **Item 1j Proposed amendments** to the next regularly scheduled meeting. The motion was seconded by Mrs. Plavchak and **APPROVED 5-0**.

Mr. Weiss asked about the procedure for the Special Meeting on October 13, 2004.

Mr. Molitor stated he had drafted a Special Rule and he would circulate it to the interested parties. If it meets with their approval, it will be submitted to the Board for adoption at the beginning of the October 13 meeting.

**K.     Adjourn.**

Mrs. Plavchak moved to adjourn. The motion was seconded by Mr. Dierckman and **APPROVED 5-0.**

The meeting was adjourned at 10:25 PM.

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Charles Weinkauff, President

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Connie Tingley, Secretary